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OFFICE OF PETITIONS

In re Application of
Patullo et al.
Application No. 09/828,437
Filed: April 6, 2001
Attorney Docket No. 330501.00002

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed October 8, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on April 5, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of February 10, 2005 accompanies this decision on petition. The Notice was directed to the previous

Address of Record since the Power of Attorney submitted with the instant petition was inadvertently processed afterwards. The Address of Record has since been updated in the USPTO system.

This application is being referred to Technology Center AU 3629 to await a reply to the outstanding non-final Office action mailed July 16, 2004. Failure to timely reply will again result in the abandonment of the application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3282.

A handwritten signature in cursive script that reads "Liana Chase".

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request